

**Hearing of the
House Resources Committee
on H.R. 4840
Amendments to the Endangered Species Act of 1973
June 19, 2002**

Members Attending

James Hansen (R-UT, Chair), Thomas Osborne (R-NE), Donna Christian-Christensen (D-VI), Greg Walden (R-OR), Richard Pombo (R-CA), Tom Udall (D-NM), Mark Udall (D-CO), Jay Inslee (D-WA), Hilda Solis (D-CA), John Duncan (R-TN), George Miller (D-CA)

Witness List

Craig Manson- Assistant Secretary for Fish and Wildlife Parks, Department of Interior
William T. Hogarth- Assistant Administrator for Fisheries, NOAA

Opening Statement

Chairman Hansen announced that this was the second part of a two part hearing. The first part included testimony from a number of members regarding the impacts of ESA on constituents.

Questions

Congressman Pombo asked Dr. Hogarth about the difference between using models and field data to make policy pointing out that there was a discrepancy between Dr. Hogarth's written testimony (support for the bill but including models) and his oral statement supporting field research. Dr. Hogarth responded that the two methods go hand in hand. He stated that once scientific data has been collected about a population, models can provide good insight for the future and that models are based on field research. Rep. Pombo then made note that Dr. Hogarth's testimony indicated that National Marine Fisheries Service (NMFS) does not want to delay decisions made based on the time restrictions given in the bill. Rep. Pombo indicated that though there is legitimate concern for the 90 day review period, a time line is necessary and the focus of the time line is to use good science to make good decisions. Rep. Pombo inquired as to Dr. Hogarth's testimony that when a question exists, you must err on the side of the species. He then asked Dr. Hogarth, "Do you believe that erring on the side of the species is good for the species even if you don't have good science?" Dr. Hogarth replied by saying that you must make decisions based on the science you have. If there is no science you have to work toward a decision keeping the species in mind.

Representative Miller questioned why NMFS would want to give preference to one kind of science over another. Rep. Miller also mentioned that current law says that the Secretary must make his decision based solely on the best science available to him and he is concerned that commercial data could be biased. Dr. Hogarth replied that NMFS wants all data to come forward. After all data is collected it is ranked and then reviewed. Rep. Miller also inquired as

to who should be involved in the consultation process and that he's concerned that H.R. 4840 emphasizes the applicant be included on Secretarial review, but not any other interested parties. Dr. Hogarth explained that the public is allowed to comment on drafts of documents relating to proposed projects prior to a biological opinion being drafted.

Congressman Osborne asked Assistant Secretary Manson about the Central Platte River whooping crane critical habitat designation. Rep. Osborne believes that there is currently a good amount of money in a cooperative agreement that should be used for a study. Assistant Secretary Manson said he would look into it.

Rep. Mark Udall was concerned that NMFS could experience increased litigation if time lines under the bill aren't met. Assistant Secretary Manson said that the opportunity for review is important in terms of deadlines. Rep. Mark Udall also wondered whether the committee should include language for additional funding for compensation. Assistant Secretary Manson said that would be subject to the committee's discretion.

Congressman Walden questioned how NMFS came to make decisions last year on its Klamath biological opinion. Rep. Walden also pointed out that original data used for the Hardy II study was recently disallowed because it was not intended for that purpose. Dr. Hogarth replied by stating that Hardy II is in the process of being peer reviewed but that NMFS made decisions based on data they had at the time. Rep. Walden then inquired whether any of the models NMFS uses are not based on field research. Dr. Hogarth said that most are based on field studies.

Congresswoman Solis wondered whether this legislation is essential. Rep. Solis asked whether it would dramatically effect what is being done now administratively. Dr. Hogarth said that the new legislation moves toward making the Act more precise and clear. Assistant Secretary Manson underlined the importance of the new legislation by the fact that it underscores the necessity for public comment.

Representative Duncan brought up ESA "horror stories" that imply that NMFS made decisions based solely on models with no scientific data to back them up. Assistant Secretary Manson admitted to having heard stories and hopes that the amendments will deal with clearing those problems up. Dr. Hogarth admitted to a scarcity of data in certain areas but emphasized that NRC recommendations have been followed to make sound decisions. Dr. Hogarth also advocated for additional data in those areas.

Rep. Inslee questioned whether the permitting process was one sided and whether the applicant has more influence with the federal government under H.R. 4840. Assistant Secretary Manson said that the applicant should take precedence because the greatest economic interest is on them. Dr. Hogarth said that that does not preclude others from having an opinion.

Congressman Otter brought up the fact that the problems that NMFS and DOI are facing now concerning the ESA were created before either Assistant Secretary Manson or Dr. Hogarth were in their current positions and that they should be given the benefit of the doubt and perhaps some room to begin to look at the problems with common sense. He also reiterated the seeming

disparity of Policy decisions made in the East and West Coasts—illustrated by the Potomac Sturgeon and Klamath River Coho salmon.

Rep. Flake brought up the example of the fact that logging in Arizona has been decimated due to the fact that Arizona has good climate conditions for the spotted owl (even though they do not presently live there). He questioned the perception of whether the East and West coasts are being treated differently by asking Dr. Hogarth whether the Potomac is suitable for the Shortnose sturgeon. Hogarth said they are looking into that situation.

Closing Statements

Rep. Pombo closed by stating that he does not expect NMFS or DOI to admit that there is a discrepancy between the East and West coasts but says that there is no doubt that many areas have been considered suitable habitat when there is little evidence of actual species present in the area. He mentioned that the time line needs to be looked at again so that it leaves enough room for field science to take place but not enough time to open yourself to litigation. He pledged to work with the Administration to resolve any of its concern with the bill before it is marked up in the Committee.